

106TH CONGRESS  
2D SESSION

# S. 1902

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mrs. FEINSTEIN (for herself, Mr. WELLSTONE, Mr. GRAMS, Mrs. BOXER, Mr. LEVIN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 18, 2000

Reported by Mr. HATCH, with an amendment

[Insert the part printed in *italic*]

JUNE 7 (legislative day, JUNE 6), 2000

Referred to the Select Committee on Intelligence pursuant to section 3(b) of S. Res. 400, 94th Congress for a period not to exceed 30 days of session

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## A BILL

To require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Japanese Imperial  
 5       Army Disclosure Act”.

6       **SEC. 2. ESTABLISHMENT OF JAPANESE IMPERIAL ARMY**  
 7               **RECORDS INTERAGENCY WORKING GROUP.**

8       (a) DEFINITIONS.—In this section:

9               (1) AGENCY.—The term “agency” has the  
 10       meaning given such term under section 551 of title  
 11       5, United States Code.

12              (2) INTERAGENCY GROUP.—The term “Inter-  
 13       agency Group” means the Japanese Imperial Army  
 14       Records Interagency Working Group established  
 15       under subsection (b).

16              (3) JAPANESE IMPERIAL ARMY RECORDS.—The  
 17       term “Japanese Imperial Army records” means clas-  
 18       sified records or portions of records that pertain to  
 19       any person with respect to whom the United States  
 20       Government, in its sole discretion, has grounds to  
 21       believe ordered, incited, assisted, or otherwise par-  
 22       ticipated in the experimentation and persecution of  
 23       any person because of race, religion, national origin,  
 24       or political option, during the period beginning Sep-  
 25       tember 18, 1931, and ending on December 31,

1 1948, under the direction of, or in association  
2 with—

3 (A) the Japanese Imperial Army;

4 (B) any government in any area occupied  
5 by the military forces of the Japanese Imperial  
6 Army;

7 (C) any government established with the  
8 assistance or cooperation of the Japanese Impe-  
9 rial Army; or

10 (D) any government which was an ally of  
11 the Imperial Army of Japan.

12 (4) RECORD.—The term “record” means a Jap-  
13 anese Imperial Army record.

14 (b) ESTABLISHMENT OF INTERAGENCY GROUP.—

15 (1) IN GENERAL.—Not later than 60 days after  
16 the date of enactment of this Act, the President  
17 shall establish the Japanese Imperial Army Records  
18 Interagency Working Group, which shall remain in  
19 existence for 3 years after the date the Interagency  
20 Group is established.

21 (2) MEMBERSHIP.—The President shall appoint  
22 to the Interagency Group individuals whom the  
23 President determines will most completely and effec-  
24 tively carry out the functions of the Interagency  
25 Group within the time limitations provided in this

1 section, including the Historian of the Department  
2 of State, the Archivist of the United States, the  
3 head of any other agency the President considers ap-  
4 propriate, and no more than 3 other persons. The  
5 head of an agency appointed by the President may  
6 designate an appropriate officer to serve on the  
7 Interagency Group in lieu of the head of such agen-  
8 cy.

9 (3) INITIAL MEETING.—Not later than 90 days  
10 after the date of enactment of this Act, the Inter-  
11 agency Group shall hold an initial meeting and begin  
12 the functions required under this section.

13 (c) FUNCTIONS.—Not later than 1 year after the date  
14 of enactment of this Act, the Interagency Group shall, to  
15 the greatest extent possible consistent with section 3 of  
16 this Act—

17 (1) locate, identify, inventory, recommend for  
18 declassification, and make available to the public at  
19 the National Archives and Records Administration,  
20 all classified Japanese Imperial Army records of the  
21 United States;

22 (2) coordinate with agencies and take such ac-  
23 tions as necessary to expedite the release of such  
24 records to the public; and

1           (3) submit a report to Congress, including the  
2           Committee on Government Reform and Oversight of  
3           the House of Representatives *and the Senate Com-*  
4           *mittee on the Judiciary*, describing all such records,  
5           the disposition of such records, and the activities of  
6           the Interagency Group and agencies under this sec-  
7           tion.

8           (d) FUNDING.—There are authorized to be appro-  
9           priated such sum as may be necessary to carry out the  
10          provisions of this Act.

11   **SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS.**

12          (a) RELEASE OF RECORDS.—

13               (1) IN GENERAL.—Subject to paragraphs (2),  
14               (3), and (4), the Japanese Imperial Army Records  
15               Interagency Working Group shall release in their en-  
16               tirety Japanese Imperial Army records.

17               (2) EXCEPTION FOR PRIVACY.—An agency head  
18               may exempt from release under paragraph (1) spe-  
19               cific information, that would—

20                       (A) constitute a clearly unwarranted inva-  
21                       sion of personal privacy;

22                       (B) reveal the identity of a confidential  
23                       human source, or reveal information about the  
24                       application of an intelligence source or method,  
25                       or reveal the identity of a human intelligence

1 source when the unauthorized disclosure of that  
2 source would clearly and demonstrably damage  
3 the national security interests of the United  
4 States;

5 (C) reveal information that would assist in  
6 the development or use of weapons of mass de-  
7 struction;

8 (D) reveal information that would impair  
9 United States cryptologic systems or activities;

10 (E) reveal information that would impair  
11 the application of state-of-the-art technology  
12 within a United States weapon system;

13 (F) reveal actual United States military  
14 war plans that remain in effect;

15 (G) reveal information that would seriously  
16 and demonstrably impair relations between the  
17 United States and a foreign government, or se-  
18 riously and demonstrably undermine ongoing  
19 diplomatic activities of the United States;

20 (H) reveal information that would clearly,  
21 and demonstrably impair the current ability of  
22 United States Government officials to protect  
23 the President, Vice President, and other offi-  
24 cials for whom protection services are author-  
25 ized in the interest of national security;

(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

(J) violate a treaty or other international agreement.

(3) APPLICATIONS OF EXEMPTIONS.—

(A) IN GENERAL.—In applying the exemptions provided in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Army. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in subparagraphs (B) through (I)

of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

(4) LIMITATION ON EXEMPTIONS.—

(A) IN GENERAL.—The exemptions set forth in paragraph (2) shall constitute the only grounds pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

(B) RECORDS RELATED TO INVESTIGATION OR PROSECUTIONS.—This subsection shall not apply to records—

(i) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

(ii) solely in the possession, custody, or control of the Office of Special Investigations.

(b) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431) shall not apply to any operational file, or any portion of any operational file,



1 that constitutes a Japanese Imperial Army record under  
2 this Act.

3 **SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR**  
4 **JAPANESE IMPERIAL ARMY RECORDS.**

5 For purposes of expedited processing under section  
6 552(a)(6)(E) of title 5, United States Code, any person  
7 who was persecuted in the manner described in section  
8 2(a)(3) and who requests a Japanese Imperial Army  
9 record shall be deemed to have a compelling need for such  
10 record.

11 **SEC. 5. EFFECTIVE DATE.**

12 The provisions of this Act shall take effect on the  
13 date that is 90 days after the date of enactment of this  
14 Act.

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